

05-1257

PETITION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY

A-243 (Rev. 2/95)

UNITED STATES DISTRICT COURT		District DISTRICT OF PUERTO RICO.
Name of Movant <b>CESAR ROBERTO CASTRO-GOMEZ.</b>	Prisoner No. <b>08903-016.</b>	Case No. <b>97-11-2.</b>
Place of Confinement <b>FEDERAL CORRECTIONAL INSTITUTION, ESTILL SOUTH CAROLINA 29918.</b>		
UNITED STATES OF AMERICA		V. <b>CESAR ROBERTO CASTRO-GOMEZ.</b> (name under which convicted)

## MOTION

- Name and location of court which entered the judgment of conviction under attack UNITED STATES DISTRICT COURT, FOR THE DISTRICT OF PUERTO RICO.
- Date of judgment of conviction AUGUST 23, 2001.
- Length of sentence LIFE SENTENCE.
- Nature of offense involved (all counts) 1) CONSPIRACY TO POSSESS WITH INTENT TO DISTRIBUTE IN VIOLATION OF 21 U.S.C. SECTION 846 AND SECTION 2; COUNT 2) ATTEMPT TO IMPORT AND POSSESS WITH INTENT TO DISTRIBUTE COCAINE ABOARD A VESSEL; COUNT 3) - AIDING AND ABETTING UNLAWFUL IMPORTATION OF COCAINE, SECTION 963.

5. What was your plea? (Check one)

- (a) Not guilty ☒  
 (b) Guilty ☐  
 (c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and not a guilty plea to another count or indictment, give details:

NOT APPLICABLE.

6. If you pleaded not guilty, what kind of trial did you have? (Check one)

- (a) Jury ☒  
 (b) Judge only ☐

7. Did you testify at the trial?

Yes ☒ No ☐

8. Did you appeal from the judgment of conviction?

Yes ☒ No ☐

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9. If you did appeal, answer the following:

(a) Name of court UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

(b) Result AFFIRMED.

(c) Date of result FEBRUARY 23, 2004.

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes ☐ No ☒

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court //

(2) Nature of proceeding //

//

(3) Grounds raised //

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(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

(5) Result N/A

(6) Date of result //

(b) As to any second petition, application or motion give the same information:

(1) Name of court //

(2) Nature of proceeding //

//

(3) Grounds raised //

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- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (h) Denial of right of appeal.

A. Ground one: TRIAL LAWYERS WERE CONSTITUTIONALLY INEFFECTIVE, AT ALL

PHASES OF THE TRIAL PROCEEDING.

Supporting FACTS (state *briefly* without citing cases or law)

SEE: MEMORANDUM OF LAW.

B. Ground two: APPELLATE COUNSEL DENIED PETITIONER EFFECTIVE ASSISTANCE  
OF COUNSEL.

Supporting FACTS (state *briefly* without citing cases or law)

SEE: MEMORANDUM OF LAW.

C. Ground three: TRIAL COURT DENIED PETITIONER CASTRO-GOMEZ FAIR TRIAL.

Supporting FACTS (state *briefly* without citing cases or law)

SEE: MEMORANDUM OF LAW AND SUPPORTING FACTS.

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D. Ground four: **PETITIONER'S FIFTH AMENDMENT RIGHT WAS VIOLATED**  
**DUE TO PROSECUTORIAL MISCONDUCT.**

Supporting FACTS (state *briefly* without citing cases or law)

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: //

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14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of judgment attacked herein:

(a) At preliminary hearing **MS. LYDIA LIZARRIBAR-MASINI, ESQ.**

**14 CALLE O'NEIL, SUITE A, HATO REY, PR. 00918.**

(b) At arraignment and plea **SAME AS ABOVE.**

(c) At trial **JOSE QUETGLAS, ESQ AND LYDIA LIZARRIBAR-MASINI, ESQ.**

(d) At sentencing **LYDIA LIZARRIBAR- MASINI, ESQ.**

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(e) On appeal LYDIA LIZARRIBAR-MASINT, ESQ.(f) In any post-conviction proceeding N/AN/A(g) On appeal from any adverse ruling in a post-conviction proceeding N/A.N/A.

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: \_\_\_\_\_

N/A.N/A.(b) Give date and length of the above sentence: LIFE SENTENCE.

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☒

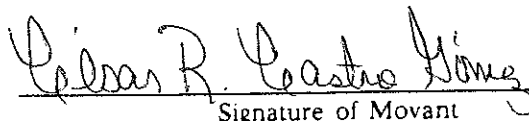
Wherefore, movant prays that the Court grant petitioner relief to which he or she may be entitled in this proceeding.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

FEBRUARY 17, 2005.

(Date)



Signature of Movant

CESAR ROBERTO CASTRO-GOMEZ.